IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4402 of 2007()

CRIME NO.165/07 OF THALASSERY POLICE STATION

PETITIONER/ACCUSED NO.4:

C. MUHAMMED IQBAL, AGED 45 YEARS,
S/O. AHAMMED, BUSHRA HOUSE, CHIRAKKARA,
THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT:

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1. STATE - REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. THE STATION HOUSE OFFICER
(CR.NO.165/2007 OF THALASSERY POLICE STATION),
KANNUR DISTRICT.

BY D.G.P. SRI.P.G. THAMPI.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4402 OF 2007

Dated this the 2nd day of August, 2007

ORDER

Whoever you be – Judge, Prosecutor, Counsel, Police Official or an ordinary lay citizen; if after going through the Case Diary in this case, your sense of justice and righteousness is not hurt or wounded, there must be something structurally defective and deficient in you. The crime alleged in this case and the sequence of events that followed are truly disturbing. Your pride of being a citizen in this Republic wedded to rule of law would be pricked. Any civilized society must hang its head down in shame that such events can take place within it anywhere. It would be abdication of responsibility for this Court to pretend not to have seen the sorry state of affairs in this Case Diary and proceed to dispose of the anticipatory bail application wearing blinkers. Observations must be made about the gross injustice in the hope that such observations

will improve the quality of criminal justice delivery system in the State and ignoring the apprehension that the observations may trigger sensational commercial journalism and provide fodder for political fencing.

2. The events took place not in any corner of the State; but in the heart of Talassery Town which has a place of prominence in the judicial map of this country - that too at the busy O.V. Road. There is a row of shops lying east to west abutting the main road. The victim in this case runs a petty shop – a textile and tailoring shop - in the middle room, having taken the premises on lease on a monthly rent of Rs.3,100/- as per a lease deed dated 1/4/04 in the name of his wife. One Musthafa and Mohammed Kunhi are said to be the joint owners of the said shop room. The petitioner herein is arrayed as the 4th accused. He is Mohammed Iqbal, the Power-of-Attorney holder of the said Mohammed Kunhi. The rooms on the east and west of the victim's shop as also the area behind have all been sold. There were requests to the victim to surrender his premises. He did

not yield to those requests. Such requests were allegedly made by accused 1 to 4 whose names are narrated in the F.I.R. On the night of 7/4/07, the victim had closed the shop and proceeded to his house in peace. The next morning he was informed that his shop room as well as the adjacent shop rooms have all been razed down brutally employing JCBs and other vehicles. The tenant - victim who thought that law will take care of them and will not be forcibly thrown out of possession, came on the next morning to see his shop room razed down and all the articles either destroyed or removed stealthily. He ran to the police station in the hope that he will get justice from the police. An F.I.R. was registered. The four persons, who had allegedly wanted the victim to surrender his shop, were naturally shown as the suspected accused persons who must have had a role in razing down his shop room. The investigation slowly proceeded. The persons in the locality were questioned by the police. The adjacent shop owner stated to the police that the four accused persons had come on the previous night to him and had insisted

that he must vacate the premises after taking away all his articles on the same night. He complied with the said request. As he was proceeding to leave his shop in the late hours, he had seen the JCB and all the paraphernalia kept ready for operation with the four accused persons present there.

3. The 4th accused – the petitioner herein came to this Court claiming anticipatory bail. On his own showing he is a very influential person of the locality. There are indications to show that he enjoys affluence also. He prayed that anticipatory bail may be granted to him. The incident took place in the night of 7/4/07 and the petitioner had come to this Court as late as on 12/7/07. He was not arrested till then. He raised a contention before me when the matter came up for hearing that he is only a suspect; that the suspicion is unjustified and that he is not liable to be arrested.

4. The learned Public Prosecutor was requested to place the Case Diary for the perusal of this Court. A perusal of the Case Diary shows that one Koduvally Rajan in a petition dated

9/4/07 had admitted before the Investigating Officer that he is the one responsible for demolition of the building. He had marked copies of the petition to all the higher officials of the police in the District. Very interestingly, he raised a contention that the victim had no rights at all and the victim was trying to get back into possession of the premises which admittedly was razed down by him. A perusal of the Case Diary revealed that the said Koduvally Rajan had not been arrayed as an accused notwithstanding his bold assertion that he was responsible for the demolition of the building. This Court was disturbed. The learned Public Prosecutor was directed to take instructions and explain. Thereafter, the learned Director General of Prosecutions has appeared on behalf of the police before me. Ordinary prudence is expected from all human beings. If such a demolition did take place, any prudent person must suspect the owner for having carried the mission. If he did not so suspect, there is something certainly suspicions in his prudence. But the Investigating Officer does not appear to have considered that

possibility at all. The Case Diary was placed before this Court on 20/7/07. Koduvally Rajan was not made an accused. No efforts were made to bring him on the array of accused or to make enquiries about him till then.

5. The learned Public Prosecutor and learned D.G.P. were requested to keep the Case Diary in their safe custody. The Investigating Officer was given an opportunity to explain. He has now filed a statement. The Case Diary now shows that the electrical energy connection to the premises was switched off on the night in question to facilitate the demolition. Now it is said that a conspiracy was hatched to carry out the evil mission. It is now stated that Koduvally Rajan has been apprehended and produced before Court on 25/7/07 after this Court made observations on 24/7/07 and gave the Investigating Officer an opportunity to explain. The Case Diary shows that the local people were outraged by the culpable conduct of the offenders. It also indicates that the local people suspected foul play. A harthal was organised by the Merchants' Association. Obviously

the sentiments of the right thinking members of the community were hurt and disturbed.

6. The Investigating Officer now tries to explain that Koduvally Rajan's address in the petition received by him was not correct. It was not handed over to him personally. It was received by post. Though it is seen that copies are marked to the superior officers, copies were not really sent. The Investigating Officer could not ascertain the identity of that person. That is why he was not arrayed as an accused and was not proceeded against till this Court made observations on 24/7/07. One cannot be too naïve and gullible to meekly swallow these excuses. If ordinary prudence is employed, it is not difficult to see that the demolition was carried out after prior concert and elaborate preparation and with the blessings or at least the willingness to close their eyes of the the powers that be to the injustice that was perpetrated. The investigation is most unsatisfactory. It is difficult to restrain oneself and not draw the inference that the entire operation had the blessings of

the powers that be.

7. Police is the visible arm of the State. Good governance cannot take place unless we have an efficient, sincere, honest and committed police force. The police force in the country must also have commitment to the fundamental values of the Constitution. Concern for the weak, the underprivileged, the less fortunate and the victims of crimes must be inherent in the police force. That is the sum and substance of the preambular commitment in the Constitution. In a socialist democratic republic if the arms of the State do not have such fundamental commitment to the weak and underprivileged, the ideals of the Constitution can never be achieved.

8. Idealism by itself will not be sufficient. It must be matched with efficient and effective systems. It has been the misfortune to this Court, sitting in this jurisdiction, to see the very low quality of investigation in crimes in this State. The police force has to become professional. Every police officer must have pride in the discharge of his duty. That is crucially

lacking today, it appears. Efforts to make the police a committed professional force have not been seriously undertaken.

9. The learned D.G.P. submits that the needful shall be done and proper and effective investigation shall be conducted in the case. In one case where this Court happens to see the Case Diary and expresses its dissatisfaction, such an offer is made. But that is not sufficient at all. It must be for the police force to ensure that ongoing supervision of investigationa is conducted by the superior officials. In each Zone and in each sub-division there must be a group of senior police officials who will monitor and supervise the investigation in the crimes. Every Investigating Officer must feel that his work will be supervised and it will be suicidal professionally if he does not act efficiently.

10. I leave it there. It is for the learned Director General of Prosecutions and the top brass of the police to take necessary steps, of course, with the active support and assistance of the political executive to ensure that the quality of investigation is

considerably improved and that those responsible for such collusive investigations are brought to book.

11. Coming back to the prayer of the 4th accused for anticipatory bail, he claims to be the Power-of-Attorney holder of one of the two joint owners of the property. The learned D.G.P. submits that Koduvally Rajan does not appear to be an important player in the crime that has been committed. He, the learned D.G.P. feels, is only a pawn in the hands of the criminals whom the learned D.G.P. describes as the `Real estate Mafia'. The petition is significantly silent that his principal has lost interest in the property and has already assigned the property to the said Koduvally Rajan. That shows that at least, the learned D.G.P. has correctly understood that the machinations were not of the persons who are the apparent title holders. The petitioner certainly appears to be an important player in the scheme that was implemented.

12. There is indication to show that the petitioner was one of those who wanted the tenant to vacate. There is material to

show that on the previous night the petitioner had gone to one of the adjacent owners and had wanted the occupant to immediately vacate the premises. There are indications in the Case Diary to show that the petitioner was present in the locality late that night.

13. The jurisdiction to grant anticipatory bail is certainly not to be invoked as a matter of course. It must be reserved for extraordinary situations where the court is satisfied that the powers of arrest are about to be misused or abused. I do not in this case find any such features which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This certainly is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and seek regular bail in the ordinary course.

14. I expect the State to take necessary steps to ensure that the investigation is entrusted to the officers of highest integrity and competence. Necessary action in this regard shall

be taken within a period of 15 days from this date and the action taken shall be reported to this Court.

15. This bail application is accordingly dismissed.

16. Hand over a copy of this order to the learned Director General of Prosecutions.

17. Call on 20/8/2007 for report of the learned D.G.P.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge